

**CALIFORNIA IMPLEMENTATION GUIDELINES
FOR FEDERAL ON-SCENE COORDINATORS**

FOR THE

**PROGRAMMATIC AGREEMENT ON PROTECTION OF
HISTORIC PROPERTIES DURING EMERGENCY RESPONSE
UNDER THE NATIONAL OIL AND HAZARDOUS SUBSTANCES
POLLUTION CONTINGENCY PLAN**

July 2005

The attached California Implementation Guidelines for Federal On-Scene Coordinators (Implementation Guidelines) for the Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan (Programmatic Agreement) have been adopted by the undersigned Federal, State, and Tribal officials in California for incorporation into their respective oil spill and hazardous substance release planning and response procedures. These Implementation Guidelines will be applicable to all planning and response activities in the State of California. The purpose of the Implementation Guidelines is to ensure consistent application and interpretation of the Programmatic Agreement throughout California by U.S. Coast Guard and U.S. Environmental Protection Agency Federal On-Scene Coordinators and representatives of supporting entities including the U.S. Departments of the Interior, Commerce, and Agriculture; the State of California, through the Department of Fish and Game - Office of Spill Prevention and Response and the Department of Parks and Recreation - Office of Historic Preservation; and the Big Pine Paiute Tribe of the Owens Valley, Blue Lake Rancheria Tribe of Indians, Stewarts Point Rancheria - Kashia Band of Pomo Indians, Table Bluff Reservation - Wiyot Tribe, Timbisha Shoshone Tribe, and the Yurok Tribe, through their Tribal Historic Preservation Officers. Although the signatories intend to follow the procedures set forth in these Implementation Guidelines, the Implementation Guidelines do not irrevocably bind the signatories to follow the procedures contained in this document.

Commander Scott Schaefer, Acting Region IX Regional Response Team Co-Chair
U.S. Coast Guard, 11th Coast Guard District

Date

Kathryn Lawrence, Acting Region IX Regional Response Team Co-Chair
U.S. Environmental Protection Agency

Date

Wayne Donaldson, California State Historic Preservation Officer
California Office of Historic Preservation

Date

Carlton Moore, Office of Spill Prevention and Response Administrator
Chief Deputy Director, California Department of Fish and Game

Date

Bill Helmer, Tribal Historic Preservation Officer Big Pine Paiute Tribe of the Owens Valley	Date
Paul Angell, Tribal Historic Preservation Officer Blue Lake Rancheria Tribe of Indians	Date
Reno Franklin, Tribal Historic Preservation Officer Stewarts Point Rancheria of Kashia Band of Pomo Indians	Date
Marnie Atkins, Tribal Historic Preservation Officer Table Bluff Reservation – Wiyot Tribe	Date
Barbara Durham, Tribal Historic Preservation Officer Timbisha Shoshone Tribe	Date
Dr. Thomas Gates, Tribal Historic Preservation Officer Yurok Tribe	Date
Bernie Weingardt, Regional Forester U.S. Department of Agriculture, Forest Service	Date
Captain Steven A. Thompson, Region IX Regional Response Team Representative U.S. Department of Commerce, NOAA	Date
Patricia Port, Region IX Regional Response Team Representative U.S. Department of the Interior	Date

TABLE OF CONTENTS

I.	BACKGROUND AND PURPOSE	1
A.	Background	1
B.	Purpose	1
II.	PRE-INCIDENT PLANNING	2
A.	Identification of Historic Properties, Parties to Be Notified, and Emergency Response Strategies Categorical Exclusions	2
A.1.	Identification of Historic Properties	2
A.2.	Identification of Parties to Be Notified	3
A.3.	Identification of Emergency Response Strategies	3
B.	Ensuring that Historic Properties Protection Strategies Can Be Carried Out	4
B.1.	Identification of Who Will Provide Historic Properties Expertise to the FOSC	4
B.2.	Identification of Appropriate Training for Historic Properties Specialists	5
B.3.	Development of Historic Property Information for Response Personnel	6
III.	FEDERAL LEAD EMERGENCY RESPONSE	6
A.	Determination of Whether Categorical Exclusions Apply	6
B.	Activation of Historic Properties Specialist	7
C.	Verify Identification of Historic Properties	8
D.	Assessment of Potential Effects of Emergency Response Strategies on Historic Properties	9
E.	Implementation of Decisions about Appropriate Emergency Response Actions	9
F.	Determination that National <i>Programmatic Agreement</i> Cannot Be Satisfied	10
IV.	REVISIONS TO CALIFORNIA IMPLEMENTATION GUIDELINES	10

LIST OF ATTACHMENTS

		PAGE #
1	Spills or Releases Categorically Excluded from Additional National Historic Preservation Act Section 106 Compliance	11
2	Potential Emergency Response Strategies for Historic Properties Protection	12
3	Historic Properties Specialists Personnel Standards	13
4	Historic Properties Protection Information for Emergency Response Personnel: Example	14
5	Federal On-Scene Coordinator Procedure for Determining When to Activate an Historic Properties Specialist	15
6	Suggested Information to Be Provided to Historic Properties Specialists Upon Activation	16
7	Historic Properties Specialist Checklist	17
8	Documentation of Actions Taken that Resulted in Unavoidable Injury to Historic Properties	19

I. BACKGROUND AND PURPOSE

A. Background

In 1994, the National Response Team (NRT) formed an *ad hoc* committee on cultural resources protection, which in turn, developed the *Programmatic Agreement on Protection of Historic Properties during Emergency Response under the National Oil and Hazardous Substances Pollution Contingency Plan (Programmatic Agreement)*. Chaired by the NRT representative from the U.S. Department of Justice, the committee included representatives from the Environmental Protection Agency (EPA), United States Coast Guard (USCG), Department of the Interior (Office of Environmental Policy and Compliance and the National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), U.S. Department of Agriculture (USDA), U.S. Department of Defense, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (SHPO).

Through a series of meetings over a two year span, the committee developed the national *Programmatic Agreement*. During this time, numerous drafts were reviewed by representatives of participating organizations. In addition, the public was afforded an opportunity to comment on the draft national *Programmatic Agreement* through a Federal Register Notice published in December 1996 by the ACHP.

After completing the public and agency review process, the *ad hoc* committee presented the national *Programmatic Agreement* to the NRT, which approved it in March 1997. In May 1997, the national *Programmatic Agreement* was signed by the first 3 of the 10 signatories, USCG, EPA, and the National Conference of SHPOs. Six of the remaining signatories signed during the ensuing months, the latest in November 1997. The final party, the USDA, signed in August 1998. The national *Programmatic Agreement* became effective for each signatory 90 days after they signed the document.

In accordance with the national *Programmatic Agreement*, regional representatives of the *Programmatic Agreement's* signatories may choose to: (1) implement the national *Programmatic Agreement*, or (2) develop a regional programmatic agreement that includes the provisions of the national *Programmatic Agreement* as well as appropriate additional provisions responsive to regional concerns. Rather than developing a regional *Programmatic Agreement*, the California Implementation Guidelines for Federal On-Scene Coordinators (Implementation Guidelines) were prepared.

B. Purpose

Section I.B. of the national *Programmatic Agreement* states that "...an 'emergency' shall be deemed to exist whenever circumstances dictate that a response action to a release or spill must be taken so expeditiously that normal consideration of the [National Historic Preservation Act] Section 106 process is not reasonably practicable." However, Section 106 of the National Historic Preservation Act (NHPA) is not restricted to initial actions. In order for the FOSC to obtain the benefit of the NHPA regulation that provides that compliance with an approved programmatic agreement satisfies the Agency's NHPA Section 106 responsibilities, the FOSC must act consistently with the provisions

of a programmatic agreement throughout the response. This document provides guidance on maximizing historical and cultural resource protection given exigent needs. These Implementation Guidelines complement the national *Programmatic Agreement* by providing information specific to California to Federal On-Scene Coordinators (FOSCs) to assist in planning for, and responding to, oil spills and hazardous substance releases in California. In addition, the Implementation Guidelines ensure consistent application and interpretation of the national *Programmatic Agreement* throughout California by USCG and EPA FOSCs and representatives of the U.S. Departments of the Interior, Commerce, and Agriculture; the State of California, through the Department of Parks and Recreation - Office of Historic Preservation and the Department of Fish and Game - Office of Spill Prevention and Response; the Big Pine Paiute Tribe of the Owens Valley, the Blue Lake Rancheria Tribe of Indians, the Stewarts Point Rancheria - Kashia Band of Pomo Indians, the Table Bluff Reservation - Wiyot Tribe, the Timbisha Shoshone Tribe, and the Yurok Tribe.

The national *Programmatic Agreement* is contained in Appendix XVII of the *Federal Region IX Regional Contingency Plan* (RCP). The Implementation Guidelines will also be included in the Appendices to the RCP. Both the national *Programmatic Agreement* and the Implementation Guidelines may be found on the Region IX RRT web page, <http://www.uscg.mil/d11/m/rrt9web>.

II. PRE-INCIDENT PLANNING

The national *Programmatic Agreement* outlines a number of steps to be taken during pre-incident planning. The discussion below reiterates each of those steps and then describes how each step will be addressed in California.

A. Identification of Historic Properties, Parties to Be Notified, and Emergency Response Strategies

1. Identification of Historic Properties and Categorical Exclusions

(a) National *Programmatic Agreement* Section V.A.1

The national *Programmatic Agreement* calls for the identification of “...(1) historic properties that have been listed in or determined eligible for inclusion in the National Register of Historic Places that might be affected by response to a release or spill; and (2) unsurveyed areas where there is a high potential for the presence of historic properties.”

The national *Programmatic Agreement* also calls for the identification of exclusions, which “...may be specific geographic areas or types of areas where, should a release or spill occur, historic properties are unlikely to be affected. This includes the specifics listed in Appendix I [of the national *Programmatic Agreement*] and any additional exclusions agreed on by the signatories to [the national *Programmatic Agreement*].”

(b) California Implementation Guidelines

There are several resources to aid in the identification of historic properties in California. The California Historical Resources Information System (CHRIS) is a statewide system for managing information on the full range of historical resources identified in California. CHRIS is under the authority and direction of the OHP, the SHPO, and the State Historical Resources Commission, and includes the statewide Historical Resources Inventory database maintained by OHP in addition to archeological and historical records maintained and managed by independent regional Information Centers. CHRIS can provide a recent list of properties included on the National Register of Historic Places, information on those sites eligible for inclusion, and other properties recognized as having historical significance by the State of California. It is important to note that required historic properties-related reporting does not always occur in a timely manner. Therefore, there may be information regarding historic properties in an area affected by a spill or release that is not contained in the CHRIS system.

It is also important to contact potentially affected tribes as they may have information about other significant sites that need to be considered in pre-incident planning and during response activities. The Native American Heritage Commission is a resource for current contact information for tribes throughout the state.

The signatories of these California Implementation Guidelines have adopted the list of location types that are categorically excluded contained in Appendix 1 of the national *Programmatic Agreement*, and have added additional location types. The expanded list is contained in Attachment 1 of the California Implementation Guidelines. If all signatories of these California Implementation Guidelines concur in writing, additional categorical exclusions may be added to Attachment 1.

2. Identification of Parties to Be Notified

(a) National *Programmatic Agreement* Section V.A.2

The national *Programmatic Agreement* calls for the development of a “...list of parties that are to be notified in the event of an incident in a non-excluded area. This list should include the SHPO for the State in which the incident occurred, federal and Indian tribal land owners or land managers and Hawaiian Native organizations in the area where the incident occurred, if any.”

(b) California Implementation Guidelines

Attachment 7 contains a checklist of parties that may need to be notified for the purposes of historic property protection in the event of an incident in a non-categorically excluded area. When an incident is in a non-categorically excluded area, the FOSC’s Historic Properties Specialist, on behalf of the FOSC, is responsible for (1) determining for each spill or incident, which of the above entities needs to be notified for historic properties protection, and (2) notifying appropriate representative(s) of those entities.

3. Identification of Emergency Response Strategies

(a) National *Programmatic Agreement* Section V.A.3

The national *Programmatic Agreement* calls for the development of “...emergency response strategies that can be reasonably anticipated to protect historic properties. The [F]ederal OSC shall ensure that response strategies, including personnel and equipment needed, are developed to protect or help protect historic properties at risk. This includes consideration of the sensitivity of historic properties to emergency response measures proposed in [Area Contingency Plans] or other response plans, including chemical countermeasures and in situ burning.”

(b) California Implementation Guidelines

A list of potential emergency response strategies that can be “...reasonably anticipated to protect historic properties” is included in Attachment 2. It is possible that other response strategies for the protection of historic properties may be identified and used during an incident response in addition to those identified in Attachment 2.

Response strategies, including Sensitive Site Strategies (S³), have been, and will continue to be, developed for many locations in Region 9. These response strategies identify specific response actions that may be taken in a defined location following an oil spill or hazardous substance release that affects, or may affect, the area identified. Publicly known historic properties have been considered in the development of existing response strategies. As future response strategies are developed, FOSCs shall ensure that they appropriately consider the protection of historic properties and that a statement on historical resource protection is included either on the graphic depicting the response strategy or in the text accompanying the strategy.

The FOSC will consult with historic properties specialists from federal and/or state parks, or from other agencies with management responsibility for the lands covered by each response strategy, as well as consult with appropriate tribal trustee and private land owner representatives, to determine how to address historical resources on each strategy. FOSCs will ensure that other emergency response measures, including pre-approvals of chemical countermeasures, include the consideration of historic properties. These activities should be completed during the pre-planning process since time constraints during an emergency response may limit the FOSC’s ability to adequately consider and mitigate the potential impacts of response strategies on historical resources.

B. Ensuring that Historic Properties Protection Strategies Can Be Carried Out

1. Identification of Who Will Provide Historic Properties Expertise to the FOSC

(a) National *Programmatic Agreement* Section V.B.1

The national *Programmatic Agreement* calls for the identification of “...who will be responsible for

providing expertise on historic properties matters to the [F]ederal OSC during emergency response. Depending on the size and complexity of the incident, a [F]ederal OSC historic properties specialist or an historic properties technical advisory group convened by the specialist may be the most effective mechanism.”

(b) California Implementation Guidelines

FOSCs are responsible for identifying individuals who may serve as the FOSC’s Historic Properties Specialist. Section IV.C.2 of the national *Programmatic Agreement* states that “A [F]ederal OSC may obtain historic properties expertise and support in any one of several ways. These include implementing an agreement with State or federal agencies that have historic properties specialists on staff (see IV.B.2 of the *Programmatic Agreement*), executing a contract with experts identified in ACPs or hiring historic properties specialists on staff.”

Attachment 3 contains Historic Properties Specialist personnel standards developed by State and Federal cultural resource specialists for use by FOSCs in identifying qualified archaeologists who could contract with FOSCs to serve as the FOSC’s Historic Properties Specialist. The USCG FOSC will be able to activate standing Blanket Purchase Agreements (BPAs), or other mechanisms, to obtain the services of an Historic Properties Specialist.

It is recommended that FOSCs have a minimum of 6 individuals pre-identified who could serve as his/her Historic Properties Specialist. In the event that pre-identified individuals are not available to serve as the Historic Properties Specialist for a given incident, the FOSCs may contact the SHPO for assistance in identifying an individual who could serve as the Historic Properties Specialist.

It should be noted that for oil spills and/or hazardous substance releases that remain solely on land managed by a single Federal land manager or tribal entity (e.g., a national park, national forest, national wildlife refuge, or reservation/rancheria), the Federal land managing agency whose land is affected may assist the FOSC by providing a cultural resources specialist from their agency to fill the role of Historic Properties Specialist.

The FOSC’s Historic Properties Specialist may recommend, depending on the characteristics of the incident, if it is appropriate to convene an historic properties technical advisory group to conduct emergency historic property protection response activities. Upon approval by the FOSC, the Historic Properties Specialist is responsible for identifying individuals who would serve on the group and for serving as the chairperson for the group.

2. Identification of Appropriate Training for Historic Properties Specialists

(a) National *Programmatic Agreement* Section V.B.2

The national *Programmatic Agreement* calls for “[p]roviding information on availability of appropriate training for historic property specialists to participate in emergency response, e.g., Hazardous Waste Operations and Emergency Response (HAZWOPER) training, familiarity with all

relevant contingency plans and response management systems.”

(b) California Implementation Guidelines

Training requirements for Historic Properties Specialists in California are included in the personnel standards identified in Attachment 3. Information on the availability of HAZWOPER and incident command system training and information on opportunities for participating in oil spill and/or hazardous substance release exercise will be provided to Historic Properties Specialists by FOSCs. Information on Region IX RRT meetings and other Region IX RRT-related activities will be provided to Historic Properties Specialists by the Region IX RRT Coordinator.

State and Federal cultural resource specialists are available to provide training to Historic Properties Specialists and FOSCs on the national *Programmatic Agreement*, the Implementation Guidelines, and implementation of the national *Programmatic Agreement* within an incident command system. Requests for training assistance may be made through DOI-OEPC.

3. Development of Historic Properties Information for Response Personnel

(a) National *Programmatic Agreement* Section V.B.3

The national *Programmatic Agreement* calls for FOSCs to work with appropriate parties “...to obtain information for response personnel on laws protecting and activities that may potentially affect historic properties.”

(b) California Implementation Guidelines

Attachment 4 contains an example of information on the protection of historic properties for response personnel. Other information on the protection of historic properties may be identified and used during an incident response in addition to the example in this attachment.

III. FEDERAL LEAD EMERGENCY RESPONSE

The national *Programmatic Agreement* outlines a number of steps to be taken during emergency response. The discussion below reiterates each of those steps and then describes how each step is addressed in California.

A. Determination of Whether Categorical Exclusions Apply

1. National *Programmatic Agreement* Sections VI.A.1 and VI.A.2

The national *Programmatic Agreement* states that the “...[F]ederal OSC shall determine whether the exclusions described in section V.A.1.b. [of the national *Programmatic Agreement*] apply. If the incident affects only excluded areas, no further actions are necessary under this [Programmatic

Agreement], unless: (a) [p]reviously unidentified historic properties are discovered during emergency response; or (b) [t]he SHPO (or appropriate federal, Indian, or Hawaiian Native organizations) notifies the [F]ederal OSC that a categorically excluded release or spill may have the potential to affect a significant historic property.” [sic]¹

The national *Programmatic Agreement* further states that “...[I]f the area where a release or spill occurs has not been excluded, in the cases specified in Section VI.A.1.a or b [of the national *Programmatic Agreement*], if the [F]ederal OSC is unsure whether an exclusion applies, or if the specifics of the incident change so that it no longer fits into one of the exclusions, the remaining steps in this Section [of the national *Programmatic Agreement*] shall be followed.”

2. California Implementation Guidelines

Attachment 5 outlines a two-step process for FOSCs to use in determining: (1) when a spill or release is into an area that is categorically excluded from further consideration under NHPA Section 106 (see Attachment 1 for a list of categorical exclusions and other relevant information), or (2) when a spill or release is into an area not categorically excluded and an Historic Properties Specialist needs to be activated.

B. Activation of an Historic Properties Specialist

1. National *Programmatic Agreement* Section VI.B

If it has been determined that a spill or release is not categorically excluded, the national *Programmatic Agreement* specifies that the FOSC shall “...[a]ctivate the agreed-upon mechanism for addressing historic properties, including notification of the parties identified pursuant to Section V.A.2. [of the national *Programmatic Agreement*], and consultation with these parties concerning the identification of historic properties that may be affected, assessing the potential effects of the emergency response, and developing and implementing emergency response activities. These requirements for notification and consultation shall be satisfied if the [F]ederal OSC makes reasonable and timely efforts to notify and consult the parties listed in this Section [of the national *Programmatic Agreement*]. Thereafter there shall be additional consultation to the extent practicable.”

2. California Implementation Guidelines

Attachment 5 outlines the procedures for FOSCs to use when determining whether to activate an Historic Properties Specialist. If a spill or release does not meet the requirements for a categorical exclusion from additional NHPA Section 106 consideration (as identified in Attachment 1), an Historic Properties Specialist will be activated to continue in accordance with the national *Programmatic Agreement*.

The activation of an Historic Properties Specialist is time-critical and should to occur in a reasonable

¹ These are releases or spills into a location that is categorically excluded.

and timely manner to ensure that the Historic Properties Specialist may provide meaningful input to the FOSC in the earliest phases of emergency response. Activation of an Historic Properties Specialist ensures that appropriate historic properties consultations and notifications, which are required by the national Programmatic Agreement, are conducted and information on historic properties in the spill or release area is provided to the FOSC.

Attachment 6 contains a list of suggested information to be provided to an Historic Properties Specialist at the time of his/her activation by the FOSC.

Following activation of an Historic Properties Specialist, it is the responsibility of the Historic Properties Specialist to identify the appropriate parties to notify and ensure that this notification, and potentially consultation, occurs. The Historic Properties Specialist will also assess the potential of emergency response activities to negatively affect historic properties, provide input to the FOSC on ways to avoid or reduce negative effects of emergency response activities on historic properties, and to provide recommendations on additional response strategies that could further protect historic properties. Specific information on how those responsibilities will be accomplished is outlined below in Section III.C. through Section III.E.

For practical reasons, the Historic Properties Specialist will be housed in and work through the Environmental Unit during an emergency response; however, due to the time-critical nature of protecting historic properties, the Historic Property Specialist may report directly to the FOSC in the event that emergency response activities are posing an immediate threat to historic properties and the issue cannot be resolved within the unit in a timely manner. Consequently, this person must be fully trained in the Incident Command System (ICS) structure, function, and process (i.e., ICS 300-Intermediate ICS level training), and will be expected to regularly participate in drills in exercises.

C. Verify Identification of Historic Properties

1. National *Programmatic Agreement* Sections VI.C.1 and VI.C.2

The national *Programmatic Agreement* calls for consultation “...with the SHPO, landowners and/or land managers, appropriate Indian tribes and Native Hawaiian organizations, and other interested parties identified in pre-incident planning to verify the location of historic properties identified during the planning process and determine if other historic properties exist in areas identified in V.A.1.a.2. [of the national *Programmatic Agreement*] that might be affected by the incident or the emergency response.”

The national *Programmatic Agreement* further states that “...[I]f newly discovered or unanticipated potential historic properties are encountered during emergency response actions, the [F]ederal OSC shall either: 1) consult with the SHPO (or appropriate [F]ederal, Indian, or Hawaiian Native organizations) to determine if the properties are eligible for inclusion in the National Register, or 2) treat the properties as eligible.”

2. California Implementation Guidelines

Attachment 7 includes a checklist of steps Historic Properties Specialists need to take to identify historic properties that may be affected by an incident or emergency response activities resulting from the incident. The identification process may require an on-site inspection(s).

D. Assessment of Potential Effects of Emergency Response Strategies on Historic Properties.

1. National *Programmatic Agreement* Sections V.D.1 and V.D.3

The national *Programmatic Agreement* calls for “...an assessment of potential effects of emergency response strategies on historic properties. Such assessment shall be done in consultation with the parties listed in Section V.A. [of the national *Programmatic Agreement*].”

2. California Implementation Guidelines

Attachment 7 includes a checklist of steps Historic Properties Specialists need to take to assess whether potential emergency response activities will negatively affect historic properties. This assessment needs to be based on consultation with appropriate entities and, if possible, a review of aerial photography or other documentation of the area affected or potentially affected by the spill or release. The assessment may require an on-site inspection(s). As stated in Section II.A.3 (b), to the extent possible, the potential impacts of response strategies on historical resources will have been considered during the pre-planning process.

E. Implementation of Decisions about Appropriate Emergency Response Actions

1. National *Programmatic Agreement* Sections VI.E.1 – VI.E.4

The national *Programmatic Agreement* states that the “[F]ederal OSC shall take into account professional comments received from the parties listed in Section V.A. [in the national *Programmatic Agreement*] in making decisions that might affect historic properties. Emergency response strategies delineated in plans may need to be reviewed based on information available at the time of an actual incident. The purpose of this review is to evaluate whether implementation of the strategies in the plan might, for the emergency response action that is underway, adversely affect historic properties and, if so, how such effects might be avoided or reduced.”

The national *Programmatic Agreement* also calls for the FOOSC to “[m]ake arrangements for suspected artifact theft to be reported to the SHPO, law enforcement officials, and the landowner/manager; [a]rrange for disposition of records and collected materials; and [e]nsure the confidentiality of historic property site location information, consistent with applicable laws, so as to minimize opportunities for vandalism or theft.”

2. California Implementation Guidelines

Attachment 7 includes a reminder that the Historic Properties Specialists need to (1) report suspected artifact theft to the FOOSC, California SHPO, law enforcement officials, and the landowner and/or land manager; (2) arrange for disposition of records and collected materials; and (3) ensure the confidentiality of historic property site location information, consistent with applicable laws, to minimize opportunities for vandalism or theft.

As previously stated, Section I.B. of the national *Programmatic Agreement* states that “...an ‘emergency’ shall be deemed to exist whenever circumstances dictate that a response action to a release or spill must be taken so expeditiously that normal consideration of the Section 106 process is not reasonably practicable.” The FOOSC must act consistently with the provisions of a programmatic agreement throughout the response in order to obtain the benefit of the NHPA regulation that provides that compliance with an approved programmatic agreement satisfies the Agency’s NHPA Section 106 responsibilities.

F. Determination that National *Programmatic Agreement* Cannot Be Satisfied

1. National *Programmatic Agreement* Section VI.F

The national *Programmatic Agreement* states in Section VI.F. that “Whenever the federal OSC determines the requirements of this Section cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the determination shall be documented in writing including the name and title of the person who made the determination; the date of determination; and a brief description of the competing values between public health and safety and carrying on the provisions of this Section. Notwithstanding such a determination, if conditions subsequently permit, the federal OSC shall endeavor to comply with the requirements of this Section to the extent reasonably practicable.”

2. California Implementation Guidelines

If the FOOSC determines the emergency response requirements of the national *Programmatic Agreement* cannot be satisfied concurrently with the paramount requirement of protecting public health and safety, the FOOSC may use the form in Attachment 8 to provide the required documentation to the California SHPO and potentially affected resource managers and trustees.

IV. REVISIONS TO CALIFORNIA IMPLEMENTATION GUIDELINES

Revisions to the California Implementation Guidelines may be made if all signatories of the Implementation Guidelines concur in writing.

ATTACHMENT 1

SPILLS OR RELEASES CATEGORICALLY EXCLUDED FROM ADDITIONAL NATIONAL HISTORIC PRESERVATION ACT SECTION 106 COMPLIANCE*

<p>➤ Threatened spills/releases:</p> <p>➤ Response activities related to threatened spills or releases that include the removal of fuel, and which will not include land/submerged land-disturbing activities. For the purposes of this attachment, limited manual subsurface testing (e.g., shovel tests) to assess the presence, amount, and/or extent of oil or hazardous substance contamination is not considered a ground-disturbing activity.</p>
<p>➤ Spills/releases onto (which stay on):</p> <p>➤ Gravel pads.</p> <p>➤ Roads (gravel or paved, not including the undeveloped right-of-way).</p> <p>➤ Parking areas (graded or paved).</p> <p>➤ Piers, pilings, and dock staging areas less than 50 years old.</p> <p>➤ Gravel causeways, jetties, breakwaters.</p> <p>➤ Artificial gravel islands.</p> <p>➤ Drilling mats, pads, and/or berms.</p> <p>➤ Airport runways (improved gravel strips and/or paved runways).</p> <p>➤ Tidal shorelines exposed to aggressive wave action resulting in erosion and sediment reworking.</p> <p>➤ Existing paths, roads, and public use areas that are improved, marked or mapped, or worn bare and have no proscription against walking, providing no soil is disturbed.</p>
<p>➤ Spills/releases into (that stay in):</p> <p>➤ Water bodies where the spill or release: (1) <u>will not</u> reach land/submerged land; and (2) will not include emergency response activities with land/submerged land-disturbing components.</p> <p>➤ Water bodies where the spill or release: (1) <u>will</u> reach land/submerged land; and (2) will not include emergency response activities with land/submerged land-disturbing components.</p> <p>➤ Lined pits (e.g., drilling mud pits, reserve pits, and borrow pits) and concrete containment areas.</p> <p>➤ Levees, flood control canals, and ditches.</p> <p>➤ Riprap and other revetments.</p>
<p>➤ Spills/releases of:</p> <p>➤ Gases (e.g., chlorine gas)</p>

Important Note to Federal On-Scene Coordinators: (1) If you are not sure whether a spill or release fits into one of the categories listed above; (2) if at any time, the specifics of a spill or release change so it no longer fits into one of the categories listed above; (3) if the spill is greater than 100,000 gallons; and/or (4) if the California State Historic Preservation Officer or the representative of a Federally-recognized tribe notifies you that a categorically-excluded spill or release may have the potential to affect a significant historic property, then an Historic Properties Specialist needs to be activated in accordance with the Nationwide Programmatic Agreement and the California Implementation Guidelines.

*This list includes all categorical exclusions adopted in the *Programmatic Agreement* as well as additional categorical exclusions agreed to by the signatories of the California Implementation Guidelines.

ATTACHMENT 2

POTENTIAL EMERGENCY RESPONSE STRATEGIES FOR HISTORIC PROPERTIES PROTECTION*

RESPONSE STRATEGY
Mechanical recovery (e.g., use of skimmers, booms, sorbents)
In situ burning
Dispersant use
Protective or diversionary booming
Covering site with protective material
Construction of berms or trenches to divert product away from sites/areas
On-scene inspections by the FOSC Historic Properties Specialist or individual(s) authorized by the FOSC's Historic Properties Specialist
On-scene monitoring by the FOSC Historic Properties Specialist or individual(s) authorized by the FOSC's Historic Properties Specialist
Participation in Shoreline Cleanup Assessment Teams by the FOSC's Historic Properties Specialist or individual(s) authorized by the FOSC Historic Properties Specialist
Participation in Shoreline Cleanup Teams by the FOSC's Historic Properties Specialist or individual(s) authorized by the FOSC's Historic Properties Specialist
Provision of information on historic properties protection to response personnel
Provision of information to the FOSC on historic properties protection for areas/locations proposed for emergency-response-related support activities (e.g., helipads and staging areas)

* It is important to note that these response strategies are not listed in any priority order. In addition, other response strategies for the protection of historic properties may be identified and recommended to the FOSC for use during an incident response.

ATTACHMENT 3

HISTORIC PROPERTIES SPECIALISTS PERSONNEL STANDARDS

These standards apply to individuals contracted to provide technical services to Federal On-Scene Coordinators as Historic Properties Specialists. Standards for individuals performing field historic properties duties in a spill response (such as Shoreline Cleanup Assessment Team [SCAT] Archaeologists), either for the responsible party or for the government, may be different.

1. The individual must meet the Secretary of the Interior's Historic Preservation Professional Qualification Standards for either Prehistoric or Historical Archeology. In general, these require a graduate degree in Anthropology (or a closely related field), with a specialization in Archeology, and two and one-half years of professional experience. These standards can be found on-line at <http://www.cr.nps.gov/hps/laws/ProfQual83.htm>.
2. The individual must have demonstrated familiarity with the archaeology and environment of the area in question.
3. The individual must be fully familiar with Federal and State laws and regulations governing historic preservation, and with the operation of the California Office of Historic Preservation, including especially the California Historical Resources Information System (CHRIS).
4. The individual must have, or must acquire, training in compliance with the standards found in 29 CFR 1910 (Hazardous Waste Operations and Emergency Response) and must have, or must acquire, ICS 300 level Incident Command System training. Additionally, the individual should have familiarity with the *National Contingency Plan for Oil and Hazardous Substances Pollution Contingency Plan (NCP)*; the *Federal Region 9 Regional Contingency Plan (RCP)* and *RCP subarea contingency plans*; the *Programmatic Agreement on the Protection of Historic Properties during Emergency Response under the NCP (Programmatic Agreement)* and the California Implementation Guidelines for Federal On-Scene Coordinators; and specific procedures such as the SCAT process.

NOTE: *Individuals contracted to provide technical services to Federal On-Scene Coordinators as Historic Properties Specialists will be expected to regularly participate in drills and exercises. This will include, at minimum, one National Preparedness for Response Exercise Program (NPREP) exercise per year.*

ATTACHMENT 4

HISTORIC PROPERTIES PROTECTION INFORMATION FOR EMERGENCY RESPONSE PERSONNEL: EXAMPLE

Tanker XYZ Cleanup Cultural Resource Policy

The California Office of Historic Preservation's policy regarding cultural resources as follows:

to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations

The Unified Command of the Tanker XYZ cleanup strongly supports this policy, and will ensure compliance with State and Federal laws protecting cultural resources. On behalf of the FOSC and within the Unified Command structure, the FOSC's Historic Properties Specialist will ensure that cultural resources are appropriately considered during oil spill response activities. Response personnel play a key role in this program by being aware of their responsibilities under State and Federal law, and by dealing with sites properly when they are encountered. Whenever personnel encounter or discover an archaeological site or artifact, they are required to:

- Leave cultural materials in place at the site of discovery, and mark its location.
- Stop cleanup work in the vicinity surrounding the site.
- Immediately inform the field supervisor, who in turn, should immediately inform the FOSC's Historic Properties Specialist or an appropriately designated cultural resources specialist.

Various Federal laws and regulations prohibit collecting or tampering with protected cultural resources, including artifacts, fossils, human skeletal remains, and other items of antiquity, and violation of the act is a crime. In addition, violation of Federal laws protecting cultural resources may result in fines and imprisonment.

All oil spill response personnel (employees and their contractors) must comply with this Cultural Resource Policy:

Anyone found vandalizing, moving, or taking away cultural materials will be subject to disciplinary actions up to and including immediate dismissal from their work, and an incident report may be filed with law enforcement authorities, requesting prosecution under applicable law.

Federal On-Scene Coordinator

State On-Scene Coordinator

By, for, and on behalf of (Responsible Party)

ATTACHMENT 5

FEDERAL ON-SCENE COORDINATOR PROCEDURE FOR DETERMINING WHEN TO ACTIVATE AN HISTORIC PROPERTIES SPECIALIST

STEP 1: Receive Notification of Oil Spill or Hazardous Substance Release

STEP 2: Determine if Historic Properties Need to Be Considered

Does the spill or release fall into one of the following categories listed in Attachment 1?

- ☐ Yes
- ☐ No

If the answer is "YES", no other actions regarding historic properties protection are required.

If the answer is "NO", proceed to Step 3.

STEP 3: To Continue in Accordance with the National Programmatic Agreement, Activate Federal On-Scene Coordinator's Historic Properties Specialist

See FOSC's list of pre-identified Historic Properties Specialists.

See Attachment 6 for suggested information to provide to the Historic Properties Specialist upon activation.

NOTE: Activation of an Historic Properties Specialist must be accomplished in a "reasonable and timely" manner. See Section III of the California Implementation Guidelines for more detailed information.

ATTACHMENT 6

**SUGGESTED INFORMATION TO BE PROVIDED TO HISTORIC PROPERTIES
SPECIALISTS UPON ACTIVATION**

Name of incident		
Date/time of incident		
Spill/release location		<input type="checkbox"/> land <input type="checkbox"/> water <input type="checkbox"/> land/water
Spill/release coordinates (lat/long)		
If on land	estimate number of acres contaminated	
	provide legal description of location (township, range, & section)	
	distance to nearest water body	
If in water, distance to nearest land		
Product released		<input type="checkbox"/> North Slope Crude Oil <input type="checkbox"/> Other Crude Oil (specify): <input type="checkbox"/> Residual Fuel Oil <input type="checkbox"/> Diesel #2/Heating Oil <input type="checkbox"/> Jet Fuel <input type="checkbox"/> Gasoline <input type="checkbox"/> Other (specify):
Estimated volume of product released (state whether gallons or barrels)		
Release status		<input type="checkbox"/> Stopped <input type="checkbox"/> Continuing <input type="checkbox"/> Unknown
Is spill/release		<input type="checkbox"/> Contained <input type="checkbox"/> Spreading <input type="checkbox"/> Unknown
Have Sensitive Site Strategies been approved for the area affected or potentially affected by the spill/release?		<input type="checkbox"/> Yes <input type="checkbox"/> No
Describe any response actions proposed or taken that include ground-disturbing activities		

ATTACHMENT 7

HISTORIC PROPERTIES SPECIALIST CHECKLIST*

THE FOLLOWING STEPS NEED TO BE TAKEN AS APPROPRIATE BY THE FEDERAL ON-SCENE COORDINATOR'S HISTORIC PROPERTIES SPECIALIST FOLLOWING ACTIVATION**:	
<input type="checkbox"/>	If the spill/release occurs in an area where response strategies have been developed, check the historic properties note on the strategy and discuss appropriate actions with the FOSC.
<input type="checkbox"/>	Identify the (1) location(s) of known historic properties affected or potentially affected by the spill or release; and/or (2) potential for undocumented historic properties affected or potentially affected by the spill or release.
<input type="checkbox"/>	<i>Notify/consult with the following Tribal Historic Preservation Officers, as appropriate:</i> <ul style="list-style-type: none"> <input type="checkbox"/> <i>Big Pine Paiute Tribe of the Owens Valley</i> <input type="checkbox"/> <i>Blue Lake Rancheria Tribe of Indians</i> <input type="checkbox"/> <i>Stewarts Point Rancheria - Kashia Band of Pomo Indians</i> <input type="checkbox"/> <i>Table Bluff Reservation - Wiyot Tribe</i> <input type="checkbox"/> <i>Timbisha Shoshone Tribe</i> <input type="checkbox"/> <i>Yurok Tribe</i>
<input type="checkbox"/>	<i>Notify/consult with:</i> <ul style="list-style-type: none"> <input type="checkbox"/> <i>California State Historic Preservation Office</i> <input type="checkbox"/> <i>Appropriate CHRIS Information Center</i> <input type="checkbox"/> <i>Native American Heritage Commission</i>
<input type="checkbox"/>	<i>Notify/consult with the appropriate federal, state, and local landowner(s) and/or land manager(s).</i>
<input type="checkbox"/>	<i>Notify/consult with potentially affected Tribes</i>
<input type="checkbox"/>	<i>Consult with archaeologists/historians/local residents knowledgeable about the area.</i>
<input type="checkbox"/>	<i>Consult with Responsible Party's Historic Properties Specialist (if identified).</i>
<input type="checkbox"/>	<i>Review (if available) aerial photos or other documentation of the area affected or potentially affected by the spill or release (this could include digital photographs/videos taken by on-scene representatives).</i>
<input type="checkbox"/>	<i>If necessary, conduct on-site inspection to determine presence of historic properties.</i>
<input type="checkbox"/>	Assess whether emergency response strategies have the potential to affect historic properties.
<input type="checkbox"/>	Establish an historic properties policy for all spill-related field personnel.
<input type="checkbox"/>	<ul style="list-style-type: none"> <input type="checkbox"/> Implement policy through the Unified Command (e.g., FOSC, Safety Officer, or other appropriate individuals.)
<input type="checkbox"/>	Help identify strategies (see Attachment 2) to protect historic properties.
<input type="checkbox"/>	<ul style="list-style-type: none"> <input type="checkbox"/> Provide information on response activities that have the potential to negatively affect historic properties.

*It should be noted that additional steps may be required in more complex incidents. In addition, the identified tasks may require additional qualified individuals working under the direction/oversight of the FOSC's Historic Properties Specialist. Qualified individuals may include cultural resources specialists working for the Responsible Party.

**Following activation, brief written activity summaries need to be provided daily by the Historic Properties Specialist to the FOSC and the California SHPO.

ATTACHMENT 7, CONT.

HISTORIC PROPERTIES SPECIALIST CHECKLIST, CONT.

ONE OR MORE OF THE FOLLOWING STEPS NEED TO BE TAKEN AS APPROPRIATE, AT THE RECOMMENDATION OF THE HISTORIC PROPERTIES SPECIALIST FOLLOWING APPROVAL BY THE FEDERAL ON-SCENE COORDINATOR:		
<input type="checkbox"/>	Travel to the spill or release site to inspect or monitor on-site activities to minimize or eliminate potential historic properties impacts resulting from response-related activities.	
	<input type="checkbox"/>	Provide information on response activities that have the potential to negatively affect historic properties.
<input type="checkbox"/>	Conduct field survey(s) to provide input to the FOSC on areas that need protection.	
<input type="checkbox"/>	Participate in assessment teams that survey oiled shorelines and adjacent lands.	
<input type="checkbox"/>	Create an Historic Properties Technical Advisory Group to review proposed cleanup strategies for shorelines and adjacent lands.	
<input type="checkbox"/>	Provide on-site monitoring of cleanup crews.	
<input type="checkbox"/>	Conduct archaeological and/or historical recovery at an oiled site.	
	<input type="checkbox"/>	Arrange for appropriate permits.
	<input type="checkbox"/>	Arrange for disposition of records and collected materials.
<input type="checkbox"/>	Ensure the confidentiality of site location information for all activities identified above.	
<input type="checkbox"/>	Report any actual or suspected artifact theft to the FOSC, California State Historic Preservation Officer, appropriate law enforcement officials and the landowner and/or land manager.	
	<input type="checkbox"/>	Provide input to Unified Command on how to prevent additional artifact theft.

ATTACHMENT 8

DOCUMENTATION OF ACTIONS TAKEN THAT RESULTED IN UNAVOIDABLE INJURY TO HISTORIC PROPERTIES

This form should be completed and submitted, along with any additional supporting documentation in a reasonable and timely manner to the appropriate entities listed below:

Name of incident: Date/time of incident: Location of incident:
Brief description of response action approved (including the date) by Federal On-Scene Coordinator (OSC) where protecting public health and safety was in conflict with protecting historic properties: Brief description of why protecting public health and safety could not be accomplished while also protecting historic properties: FOSC Name and Title: FOSC Signature: Date of Signature:
Faxed to: <input type="checkbox"/> Wayne Donaldson, California SHPO (916-653-9824 fax) <input type="checkbox"/> (Insert name and fax number of potentially affected resource managers/trustees): <input type="checkbox"/> (Insert name and fax number of potentially affected resource managers/trustees): <input type="checkbox"/> (Insert name and fax number of potentially affected resource managers/trustees):